

United States Court of Appeals for the Sixth Circuit

MOTION UNDER 28 U.S.C. § 2244 FOR LEAVE TO FILE A SECOND OR SUCCESSIVE HABEAS CORPUS PETITION UNDER 28 U.S.C. §2254 BY A PERSON IN STATE CUSTODY

Case Number (to be provided by the court): _____

Name: _____

Prisoner Number: _____

Place of Confinement: _____

Instructions

- (1) **Purpose.** Use the attached form to file a motion under 28 U.S.C. § 2244 for an order authorizing the district court to consider a second or successive petition under 28 U.S.C. § 2254.*

* If the district court transferred your petition or motion to this court and you do not feel that you should be required to obtain prior authorization, you must still complete this form. You may, however, attach an additional statement explaining to the court why you oppose the transfer.

- (2) **Form.** You must answer all questions completely and concisely in the proper space on the form. Attach additional pages if necessary to list all of your claims and the facts upon which you rely to support those claims. Your failure to provide complete answers may result in the court of appeals denying your motion for authorization.
- (3) **Standard of Review.** In accordance with the Antiterrorism and Effective Death Penalty Act of 1996, as codified at 28 U.S.C. § 2244(b), before authorization to file a second or successive petition can be granted by the United States Court of Appeals, the movant must make a prima facie showing that he or she satisfies either of the following conditions found in 28 U.S.C. § 2244(b)(2):

- (A) The claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the United States Supreme Court, that was previously unavailable; **or**
- (B)(i) The factual predicate for the claim could not have been discovered previously through the exercise of due diligence; **and**
- (ii) The facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable fact finder would have found the applicant guilty of the underlying offense.

Pursuant to 28 U.S.C. § 2244(b)(1), the court will not consider claims that were presented in a prior 28 U.S.C. § 2254 petition.

- (4) **Attestation.** You must sign the motion at the end of page 9. Failure to sign the motion for authorization may result in the court of appeals denying your motion.
- (5) **Copies.** If they are reasonably available, you must file with your motion the magistrate judge's report and recommendation and the district court's opinion from your prior 28 U.S.C. § 2254 proceedings.
- (6) **No Filing Fee.** There is no fee for filing a motion under 28 U.S.C. § 2244 for an order authorizing the district court to consider a second or successive petition under 28 U.S.C. § 2254.
- (7) **Filing.** When this motion for authorization is fully completed, **mail the original (with all documents attached) to the below address.** The court of appeals will serve your motion and attachments on the appropriate state Attorney General using the electronic case filing (ECF) system.

Sixth Circuit Court of Appeals
Clerk's Office
Room 540, Potter Stewart U.S. Courthouse
100 E. Fifth Street
Cincinnati, OH 45202

**MOTION UNDER 28 U.S.C. § 2244 FOR LEAVE TO FILE A SECOND OR SUCCESSIVE
HABEAS CORPUS PETITION UNDER 28 U.S.C. § 2254
BY A PERSON IN STATE CUSTODY**

A. STATE COURT PROCEEDINGS

1. (a) Name and location of the court that entered the judgment of conviction under attack:

(b) Case number: _____

2. Date of judgment of conviction: _____

3. Length of sentence: _____

4. Offense or offenses for which you were convicted:

5. Did you appeal the conviction and sentence? **YES** **NO**

6. If you appealed, give the name of court, the result, and the date of the result:

B. PRIOR FEDERAL HABEAS CORPUS PROCEEDINGS

7. Have you previously filed a habeas corpus petition or other application for collateral relief **in any federal court** related to this conviction and sentence?

YES **NO** If "yes," how many? _____

If more than one, attach a separate page providing the information required in items 7(a) through 7(g) for the additional petitions, applications, or motions.

As to the **first** federal petition, give the following information.

(a) Name of court: _____

(b) Case number: _____

(c) Nature of proceeding: _____

(d) Claims raised (list **all** claims, using extra pages if necessary):

(e) Result and date of result: _____

(f) Did you appeal? **YES** **NO**

(g) If you appealed, give the result and the date of the result:

C. PROPOSED CLAIMS IN CURRENT MOTION FOR AUTHORIZATION

8. State concisely the claim (or claims) that you **now** wish to raise. Summarize briefly the facts supporting each ground.

Claim One: _____

Supporting **FACTS** (tell your story briefly without citing cases or law):

Was this claim raised in a prior federal petition, application, or motion?

YES NO

Does this claim rely on a “new rule of constitutional law”? **YES NO**

If “yes,” state the new rule of law (give case name and citation):

Does this claim rely on newly discovered evidence? **YES** **NO**

If “yes,” briefly state the new evidence and why it was not previously available:

Claim Two: _____

Supporting **FACTS** (tell your story briefly without citing cases or law):

Was this claim raised in a prior federal petition, application, or motion?

YES **NO**

Does this claim rely on a “new rule of constitutional law”?

YES

NO

If “yes,” state the new rule of law (give case name and citation):

Does this claim rely on newly discovered evidence?

YES

NO

If “yes,” briefly state the new evidence and why it was not previously available:

Claim Three: _____

Supporting **FACTS** (tell your story briefly without citing cases or law):

Was this claim raised in a prior federal petition, application, or motion?

YES **NO**

Does this claim rely on a “new rule of constitutional law”? **YES** **NO**

If “yes,” state the new rule of law (give case name and citation):

Does this claim rely on newly discovered evidence? **YES** **NO**

If “yes,” briefly state the new evidence and why it was not previously available:

Additional claims may be asserted on additional pages if necessary.

9. Do you have any motion or appeal now pending in any federal court as to the judgment now under attack?

YES

NO

If “yes,” name of court and nature of proceeding: _____

Case number: _____

Wherefore, movant asks the United States Court of Appeals for the Sixth Circuit to grant an order authorizing the district court to consider the movant’s second or successive petition for a writ of habeas corpus under 28 U.S.C. § 2254. I declare under penalty of perjury that my answers to all the questions in this motion for authorization are true and correct.

Executed on _____
(Date)

Movant’s Signature